

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

146I0457

SENATE BILL NO. 78

Introduced by: Senators Earley, Abdallah, Dempster, Jaspers, Knudson, Koetzle, Kooistra, Moore, Reedy, Sutton (Dan), and Symens and Representatives Cradduck, Elliott, LaRue, Murschel, Peterson (Jim), Wick, and Williamson

1 FOR AN ACT ENTITLED, An Act to require notification of interested parties in the release of
2 certain confidential information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-11 be amended to read as follows:

5 26-8A-11. Within thirty days after notice of a substantiated investigation by the Department
6 of Social Services, a subject of a report of abuse or neglect may request the department to
7 amend, expunge identifying information from, or remove the record of the report from the
8 register. The request shall be in writing and directed to the person designated by the department
9 in the notice. If the department refuses to do so or does not act within thirty days after receipt
10 of the written request, the subject may request an administrative hearing within thirty days to
11 determine whether the record of the report should be amended, expunged, or removed on the
12 grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.
13 However, if there has been a court finding of child abuse or neglect, the report's accuracy is
14 conclusively presumed and the subject has no right to an administrative hearing on the ground
15 of inaccuracy. The hearing shall be held within a reasonable time after the subject's request and



1 at a reasonable place and hour. The appropriate local office of the Department of Social Services
2 shall be given notice of the hearing. If records containing names of persons who reported the
3 alleged abuse or neglect or the names of people interviewed in the resulting investigation are to
4 be revealed to the person who was the subject of the report or to the subject's legal counsel, the
5 department shall make a good faith effort to notify the persons whose names will be released
6 prior to release. In the hearing, the burden of proving the accuracy and consistency of the record
7 is on the department. The hearing examiner may order the amendment, expunction, or removal
8 of the record to make it accurate and consistent with this chapter. However, under no
9 circumstances, may the hearing examiner order or may the department carry out any amendment,
10 expunction, or removal of any portion of the record that proves, affirms, corroborates, or
11 supports the innocence of the subject of the report without the express written authority of the
12 subject. The decision shall be made in writing within ninety days after the date of receipt of the
13 request for a hearing and shall state the reasons upon which it is based. Decisions of the
14 department under this section are administrative decisions subject to judicial review under
15 chapter 1-26. In any case where there has been no substantiated report of child abuse and
16 neglect, the department may not maintain a record or other information of unsubstantiated child
17 abuse and neglect for longer than three years if there has been no further report within that
18 three-year period.

19 Section 2. That § 26-8A-13 be amended to read as follows:

20 26-8A-13. All investigative case records and files relating to reports of child abuse or neglect
21 are confidential, and ~~disclosure of~~ no person may disclose any such records, files, or other
22 information ~~may be made~~ except as authorized in chapter 26-7A or this chapter. Any person who
23 knowingly violates the confidential nature of the records, files, or information is guilty of a Class
24 1 misdemeanor. The Department of Social Services may release records, files, or other

1 information to the following parties upon the receipt by the department of a request showing that
2 it is necessary for the parties to have such information in the performance of official functions
3 relating to child abuse or neglect:

4 (1) The attorney general, the state's attorneys, law enforcement agencies, protective
5 services workers, and judges of the courts investigating reports of known or
6 suspected child abuse or neglect;

7 (2) The attorney or guardian ad litem of the child who is the subject of the information;

8 (3) Public officials or their authorized representatives who require the information in
9 connection with the discharge of official duties;

10 (4) Institutions and agencies that have legal responsibility or authorization to care for,
11 treat, or supervise a child who is the subject of the information or report;

12 (5) An adoptive parent of the child who is the subject of the information or report and a
13 licensed child welfare agency, a tribal agency which the Department of Social Services
14 has an agreement with to provide child welfare agency services which would
15 otherwise require licensure by the department or any private child welfare agency
16 whose licensure has been waived pursuant to § 26-6-9, for screening of applicants;

17 (6) A state, regional, or national registry of child abuse and neglect cases and courts of
18 record of other states;

19 (7) A validly appointed and registered child protection team under § 26-8A-17;

20 (8) A physician who is caring for a child whom the physician reasonably suspects may be
21 abused or neglected;

22 (9) State hearing examiners and any person who is the subject of the report for purposes
23 directly related to review under § 26-8A-11; and

24 (10) A person eligible to submit an adoptive home study report under § 25-6-9.1 or

1 26-4-15. However, the information may only be released for the purpose of screening
2 applicants.

3 ~~Information received by an~~ An authorized receiving party shall be held confidential by the
4 ~~receiving party~~ hold the information confidential. However, the court may order the release of
5 the information or any portion of it necessary for determination of an issue before the court. If
6 records containing names of persons who reported the alleged abuse or neglect or the names of
7 people interviewed in the resulting investigation are to be revealed to the person who was the
8 subject of the report or to the subject's legal counsel, the department shall make a good faith
9 effort to notify the persons whose names will be released prior to release.

10 However, the Department of Social Services may release information and findings to the
11 media regarding the abuse or neglect of a child that resulted in a fatality or near fatality of the
12 child if the release of the information has been approved by the prosecutor who has commenced
13 or who has authority to commence legal action, and, if such disclosure has been authorized by
14 the court and is not contrary to the best interests of the child, the child's siblings, or other
15 children in the household. The information to be released shall relate to the acts of child abuse
16 or neglect that caused the fatality or near fatality of the child. However, the identity of the child
17 may never be released. For the purpose of this chapter, near fatality means an act that, as
18 certified by a physician, places the child in serious or critical condition.